IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WP(C).No. 22746 of 2007(G)

PETITIONER:

C. REJITHA, D/O. KESAVAN,
MANJALAMPARAMBATH HOUSE, P.O. KAVUMBHAGOM,
THALASSERY.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS:

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1. THALASSERY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, THALASSERY,
KANNUR DISTRICT.

2. THE TOWN PLANNING OFFICER,
THALASSERY MUNICIPALITY, THALASSERY, KANNUR DIST.

3. STATE OF KERALA,
REPRESENTED BY SECRETARY, LOCAL SELF GOVERNMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

R3 BY SR.GOVT.PLEADER SRI.K.J.MOHAMMED ANZAR.
R1 & R2 BY ADV.SRI.I.V.PRAMOD, SC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAN OF THE PROPOSED BUILDING OF PETR.

EXT.P2 – TRUE COPY OF THE INTIMATION AS PER RULE 13 KMBR ISSUED BY R2 DATED NIL.

EXT.P3 – TRUE COPY OF RESOLUTION NO.1 DT.30.8.06 OF R1.

EXT.P4 – TRUE COPY OF ORDER DT.6.10.06 IN WPC.2259/06 OF THIS COURT.

EXT.P5 – TRUE COPY OF REPRESENTATION DT.28.7.07 SUBMITTED BY PETR. BEFORE R2.

EXT.P6 – TRUE COPY OF THE JUDGMENT DT.11.9.07 IN WPC.17772/07 OF THIS COURT.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.22746 OF 2007

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DATED THIS THE 9TH OCTOBER, 2007

J U D G M E N T

The grievance of the petitioner who owns 9 cents of land in R.S.No.79/3A of Thiruvangadu Village of Thalassery Taluk is that her application for building permit for the construction of a residential building on the above property, which is her only property, has been rejected by the Municipality by Ext.P2. The reason stated in Ext.P2 is that the area is ear-marked as industrial zone in the master plan of the Municipality. Ext.P2 is impugned on various grounds and the Writ Petition is filed with the following prayers:-

> "(i) Call for the records leading to the issuance of Ext.P2 from the 2nd respondent and quash the same by issuing a writ of certiorari;
>
> (ii) issue a writ of mandamus directing the respondents to issue permit to construct a residential building in R.S.No.79/3A of Thiruvangadu Village and approve the plan submitted by the petitioner forthwith;"

2. Heard Sri.C.P.Peethambaran, counsel for the petitioner and Sri.I.V.Pramod, Standing Counsel for the Municipality. The learned

counsel for the petitioner drew my attention to Ext.P6 judgment which, according to him, was rendered on similar facts.

3. Having considered the submissions addressed at the Bar, I am of the view that the issue is covered by Ext.P6 judgment. Ext.P6, in fact, pertains to another application for building permit for construction of residential building in Thalassery Village itself. In Ext.P6, I noticed that the D.T.P. Scheme (the D.T.P. Scheme referred to therein is the Scheme referred to in Ext.P2 also) was notified as early as in 1950 and that the same has not been implemented. The judgments of this Court in **G.C.D.A. v. Dr.M.Chandrasekhar** (1994 (1) KLT 778), **Hassan v. Corporation of Calicut** (1996 (2) KLT 839) and **Beerankutty v. Municipal Commr., Manjery** (1984 KLT Sh.Notes Case No.77, p.46) are relevant.

Under these circumstances, I dispose of this Writ Petition quashing Ext.P2 and directing the Municipality to pass fresh orders on the application submitted by the petitioner for building permit and on the original of the plan submitted by the petitioner provided she files an affidavit in which she will state that in the event of any portion of the building to be constructed on the strength of the building permit to be granted by the Municipality in her favour being acquired by the

Municipality for industrial development within a period of one year of grant of permit, the petitioner will not make any claim for compensation under the Land Acquisition Act. Once the affidavit is perused, orders will be passed at the earliest and at any rate within one month of receiving copy of this judgment, without being influenced by the currency of the D.T.P. Scheme.

(PIUS C.KURIAKOSE, JUDGE)

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